

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PAYLESS
SHOESOURCE CANADA INC. AND PAYLESS SHOESOURCE CANADA GP INC.**

(the "**Applicants**")

**MOTION RECORD OF THE APPLICANTS
(Re: Liquidation Consulting Agreement Approval Order)
(Returnable February 21, 2019)**

February 19, 2019

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Inc., Payless ShoeSource Canada GP Inc.
and Payless ShoeSource Canada LP*

TO: SERVICE LIST ATTACHED

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TAB 1

**ONTARIO
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**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
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SHOESOURCE CANADA INC. AND PAYLESS SHOESOURCE CANADA GP INC.**

(the "**Applicants**")

**NOTICE OF MOTION
(Liquidation Consulting Agreement Approval Order)**

(Returnable February 21, 2019)

The Applicants will make a Motion before a Judge of the Ontario Superior Court of Justice (Commercial List), on Thursday, February 21, 2019 at 9:30 a.m., or as soon after that time as the Motion can be heard at the court house, 330 University Avenue, Toronto, Ontario, M5G 1R7.

PROPOSED METHOD OF HEARING: The Motion is to be heard orally.

THIS MOTION IS FOR:

- (a) an Order substantially in the form attached hereto as Schedule "A", *inter alia* approving the transactions contemplated under the liquidation consulting agreement entered into between Payless Holdings, LLC ("**Merchant**") and Payless ShoeSource Canada LP ("**Canadian Merchant**"), Great American Group, LLC and Tiger Capital Group, LLC (together with their respective Canadian assignees, the "**Consultant**") dated as of February 12, 2019 (the "**Liquidation Consulting Agreement**") and the sale guidelines attached as a schedule to the Liquidation Approval Order (the "**Sale Guidelines**"); and

;

- (b) such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THIS MOTION ARE:

Background

- (a) Payless Holdings LLC through its subsidiaries and related parties (collectively, “**Payless**”) is the largest specialty family footwear retailer in the Western Hemisphere, offering a wide range of shoes and accessory items at affordable prices. Payless ShoeSource Canada Inc. and Payless ShoeSource Canada GP Inc. (the “**Applicants**” and together with Payless ShoeSource Canada LP, the “**Payless Canada Entities**”) comprise the Canadian operating arm of the Payless global business and sell Payless footwear and merchandise throughout Canada from 248 retail stores across 10 provinces;
- (b) on February 18, 2019, Payless Holdings LLC and certain of its subsidiaries and affiliates (including the Payless Canada Entities) commenced cases under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the Eastern District of Missouri;
- (c) on February 19, 2019, the Applicants sought and obtained the Initial Order under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) attached hereto as Tab 2;
- (d) among other relief, the Initial Order granted a stay of proceedings until March 21, 2019 in favour of the Payless Canada Entities and their directors and officers and appointed FTI Consulting Canada Inc. to act as monitor (the “**Monitor**”);

The Liquidation Consulting Agreement

- (e) As described in the Affidavit of Stephen Marotta, sworn February 18, 2019 (the “**Initial Affidavit**”), Payless, including the Payless Canada Entities, has been unable to sustain profitable operations in the current retail environment as a result of various factors. Payless has determined that it is in the best interests of all of its stakeholders to cease all Payless operations in North America (including the U.S. and Canada), to liquidate the inventory and owned furniture, fixtures and equipment (“**FF&E**”) and pursue a reorganization of the Latin American and franchise businesses;
- (f) Payless engaged Malfitano Advisors, LLC (“**Malfitano Advisors**”) to assist as asset disposition advisor and conducted a solicitation and bidding process for liquidators. The process included, among other things, a formal request for proposal, access to all information provided by Payless and standard requirements for the submission of recovery rates, forecasts and analysis;
- (g) Two proposals were received from two bidders. Each bidding group was evaluated based on, among other things, whether it (a) had realistic views on overall recovery on the inventory, (b) had recent experience liquidating specialty footwear retail inventory, (c) would dedicate the best resources to accomplish Payless’ goals, (d) had familiarity with the Payless, its inventory systems and operational structure, and (e) had shown the ability to execute a large-scale liquidation on an expedited basis;
- (h) Based on this extensive evaluation, the Liquidation Consultant and was selected and the Merchant and Canadian Merchant entered into the Liquidation Consulting Agreement with the Liquidation Consultant on February 12, 2019. Pursuant to the Liquidation Consulting Agreement, the Liquidation Consultant was selected as

exclusive consultant to advise Payless with respect to the Payless Liquidation including, subject to approval of the Canadian Court, advising on the liquidation of the Canadian stores. Defined terms not otherwise defined herein have the meaning provided in the Liquidation Consulting Agreement;

- (i) Pursuant to the Liquidation Consulting Agreement:
 - (i) the Liquidation Consultant is retained as the Merchant's independent consultant to conduct the Sale at the Stores during the Sale Term;
 - (ii) the Sale Commencement Date for any Canadian Stores shall be no earlier than the date on which the Liquidation Consulting Agreement is approved by the Canadian Court and the Sale Termination Date shall be no later than April 30, 2019;
 - (iii) all expenses incident to the conduct of the Sale and the operation of the Canadian Stores during the Sale Term are to be borne by the Canadian Merchant; except solely for any of the specifically enumerated "Consultant Controlled Expenses" that exceed the aggregate budgeted amount as established by the Liquidation Consulting Agreement for such Consultant Controlled Expenses;
 - (iv) the Liquidation Consultant will be paid a fee based ranging from 0.75% and 2.1% of the Gross Proceeds. The fee varies based on the total gross cost recovery received for the Merchandise. The receipts from the Canadian Liquidation will be accounted for separately from the receipts from the U.S. Liquidation; and

- (v) the Sale at the Canadian Stores is to be conducted in accordance with the Sale Guidelines;
- (j) The Sale Guidelines are substantially similar to those approved in similar liquidation sales in Canada;
- (k) The Proposed Monitor is supportive of the Liquidation Consulting Agreement and the transactions contemplated therein;

Other Grounds

- (a) those further grounds set out in the Initial Affidavit and the Exhibits thereto;
- (b) those further grounds set out in the Pre-Filing Report of the Monitor, and the Appendices thereto, dated February 19, 2019;
- (c) the provisions of the CCAA and the inherent and equitable jurisdiction of this Court;
- (d) Rules 1.04, 1.05, 2.01, 2.03, 3.02, 16 and 37 of the *Rules of Civil Procedure*, R.R.O 1990, Reg. 194, as amended; and
- (e) such further other grounds as counsel may advise and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) the Initial Affidavit;
- (b) the Pre-Filing Report;
- (c) the First Report of the Monitor, to be filed; and
- (d) such other material as counsel may advise and this Honourable Court may permit.

February 19, 2019

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TAB A

Schedule "A"
LIQUIDATION CONSULTING AGREEMENT APPROVAL ORDER

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE) THURSDAY, THE 21ST
)
REGIONAL SENIOR JUSTICE MORAWETZ) DAY OF FEBRUARY, 2019

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PAYLESS
SHOESOURCE CANADA INC. AND PAYLESS SHOESOURCE CANADA GP INC.

(the "**Applicants**")

LIQUIDATION CONSULTING AGREEMENT APPROVAL ORDER

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an order, among other things, approving the consulting agreement entered into between, on the one hand, Payless Holdings, LLC and Payless ShoeSource Canada LP, and on the other hand, Great American Group, LLC and Tiger Capital Group, LLC (collectively with their respective Canadian affiliate assignees, the "**Consultant**") dated as of February 12, 2019 (the "**Consulting Agreement**") and other related relief was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Stephen Marotta sworn February 18, 2019 and the Exhibits thereto, and the pre-filing report FTI Consulting Canada Inc. in its capacity as proposed monitor dated February 19, 2019 (the "**Pre-Filing Report**") and on hearing the submissions of counsel for the Applicants and Payless ShoeSource Canada LP (each a "**Payless Canada Entity**" and collectively, the "**Payless Canada Entities**"), FTI Consulting Canada Inc. in its capacity as

court-appointed monitor (the “**Monitor**”), Wells Fargo Bank, National Association (the “**ABL Agent**”), Cortland Products Corp. (the “**Term Loan Agent**”), the Consultant, and ● and no one appearing for any other person on the service list, although properly served as appears from the affidavit of ● sworn on February [19], 2019.

Service

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that any capitalized term used and not defined herein, shall have the meaning ascribed thereto in the Initial Order, the Consulting Agreement, or the Sale Guidelines (defined below), as applicable.

Approval of the Consulting Agreement

3. **THIS COURT ORDERS** that the Consulting Agreement, including the Sale Guidelines attached hereto as Schedule “**A**” (the “**Sale Guidelines**”), and the transactions contemplated under the Consulting Agreement, are hereby approved with such minor amendments as the Payless Canada Entities, with the consent of the Monitor, and the Consultant may deem necessary and agree to in writing. Subject to the provisions of this Order, the Payless Canada Entities are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable to implement the Consulting Agreement and the Sale Guidelines and the transactions contemplated therein.

The Sale

4. **THIS COURT ORDERS** that each of the Payless Canada Entities, with the assistance of the Consultant, is authorized and directed to conduct the Sale in accordance with this Order, the

Consulting Agreement and the Sale Guidelines and to advertise and promote the Sale within the Stores, all in accordance with the Sale Guidelines. If there is a conflict between this Order, the Consulting Agreement and the Sale Guidelines, the order of priority of documents to resolve each conflict is as follows: (1) this Order; (2) the Sale Guidelines; and (3) the Consulting Agreement.

5. **THIS COURT ORDERS** that each of the Payless Canada Entities, with the assistance of the Consultant, is authorized to market and sell the Merchandise, Additional Merchant Goods and the Offered FF&E, free and clear of all liens, claims, encumbrances, security interests, hypothecs, prior claims, mortgages, charges, trusts, deemed trusts, executions, levies, financial, monetary or other claims, whether or not such claims have attached or been perfected, registered or filed and whether secured, unsecured, quantified or unquantified, contingent or otherwise, whensoever and howsoever arising, and whether such claims arose or came into existence prior to the date of this Order or arise or come into existence following the date of this Order (in each case, whether contractual, statutory, arising by operation of law, in equity or otherwise) (all of the foregoing, collectively "**Claims**"), including, without limiting the generality of the foregoing: (a) any encumbrances or charges created by the Initial Order and any other charges hereinafter granted by this Court in these proceedings; and (b) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system (all of which are collectively referred to as the "**Encumbrances**"), which Claims will attach instead to the proceeds received from the Merchandise, Additional Merchant Goods, and the Offered FF&E, other than amounts due and payable to the Consultant by any of the Payless Canada Entities under the Consulting Agreement, in the same order and priority as the Claims existed as at the date hereof.

6. **THIS COURT ORDERS** that, subject to the terms of this Order and the Sale Guidelines, the Consultant shall have the right to use the Stores and all related store services, furniture, trade fixtures and equipment, including the FF&E, located at the Stores, and other assets of any of the

Payless Canada Entities as designated under the Consulting Agreement for the purpose of conducting the Sale, and for such purposes, the Consultant shall be entitled to the benefit of the Payless Canada Entities' stay of proceedings provided pursuant to the Initial Order, as applicable and as such stay may be extended from time to time.

7. **THIS COURT ORDERS** that until the Sale Termination Date which, for greater certainty, shall be the earlier of April 30, 2019 and the effective date of a disclaimer in accordance with the CCAA, the Consultant shall have access to the Stores in accordance with the applicable leases and the Sale Guidelines on the basis that the Consultant is assisting the Payless Canada Entities and each of the Payless Canada Entities has granted the right of access to the applicable Store to the Consultant. To the extent that the terms of the applicable leases are in conflict with any term of this Order or the Sale Guidelines, the terms of this Order and the Sale Guidelines shall govern.

8. **THIS COURT ORDERS** that nothing in this Order shall amend or vary, or be deemed to amend or vary, the terms of the leases for the Stores. Nothing contained in this Order or the Sale Guidelines shall be construed to create or impose upon any of the Payless Canada Entities or the Consultant any additional restrictions not contained in the applicable lease.

9. **THIS COURT ORDERS** that nothing herein is, or shall be deemed to be a consent by any Landlord to the sale, assignment or transfer of any Lease, or to grant to the Landlord any greater rights than already exist under the terms of any applicable Lease.

10. **THIS COURT ORDERS** that until the Sale Termination Date, the Consultant shall have the right to use, without interference by any intellectual property licensor, the Payless Canada Entities' trademarks, trade names and logos, customer/marketing lists, website and social media accounts as well as all licenses and rights granted to any of the Payless Canada Entities to use the trade names, and logos of third parties, relating to and used in connection with the operation

of the Stores solely for the purpose of advertising and conducting the Sale in accordance with the terms of the Consulting Agreement, the Sale Guidelines and this Order.

11. **THIS COURT ORDERS** that the Payless Canada Entities and the Consultant are hereby authorized and directed to transfer to an account of the Monitor, as and when received, all sale proceeds from the disposition of Offered FF&E (net of the Consultant's commissions thereon), and the Monitor is hereby authorized and directed to hold such funds in a separate account opened in its name at a Canadian chartered bank for this purpose, which funds shall be distributed only upon further Order of the Court made on notice to counsel for certain first lien term lenders.

Consultant Liability

12. **THIS COURT ORDERS** that the Consultant shall act solely as an independent consultant to each of the Payless Canada Entities and that it shall not be liable for any claims against any of the Payless Canada Entities other than as expressly provided in the Consulting Agreement or the Sale Guidelines. More specifically:

- (a) The Consultant shall not be deemed to be an owner or in possession, care, control or management of the Stores or the assets located therein or associated therewith or of the Payless Canada Entities' employees located at the Stores or any other property of any of the Payless Canada Entities;
- (b) The Consultant shall not be deemed to be an employer, or a joint or successor employer or a related or common employer or payor within the meaning of any legislation governing employment or labour standards or pension benefits or health and safety or other statute, regulation or rule of law or equity for any purpose whatsoever, and shall not incur any successorship liabilities whatsoever;
and

- (c) The Payless Canada Entities shall bear all responsibility for any liability whatsoever (including without limitation losses, costs, damages, fines, or awards) relating to claims of customers, employees and any other persons arising from events and closings occurring at the Stores during and after the term of the Consulting Agreement, except to the extent that such claims are the result of events or circumstances caused or contributed to by the gross negligence or wilful misconduct of the Consultant, its employees, agents or other representatives, or otherwise in accordance with the Consulting Agreement.

13. **THIS COURT ORDERS** to the extent any of the Payless Canada Entities' landlords may have a claim against any of the Payless Canada Entities arising solely out of the conduct of the Consultant in conducting the Sale for which any of the Payless Canada Entities have claims against the Consultant under the Consulting Agreement, the Payless Canada Entity(ies) shall be deemed to have assigned free and clear such claims to the applicable landlord (the "**Assigned Landlord Rights**"); provided that each such landlord shall only be permitted to advance each such claims against the Consultant if written notice, including the reasonable details of such claims, is provided by such Landlord to the Consultant, the Payless Canada Entities and the Monitor during the period from the Sale Commencement Date to the date that is thirty (30) days following the Sale Termination Date.

Consultant as Unaffected Creditor

14. **THIS COURT ORDERS** that, in accordance with the CCAA and the Initial Order, and subject only to paragraph 6 of this Order, the Consultant shall not be affected by the stay of proceedings in respect of the Payless Canada Entities and shall be entitled to exercise its remedies under the Consulting Agreement in respect of claims of the Consultant pursuant to the Consulting Agreement (collectively, the "**Consultant's Claims**"), the Consultant shall be treated as an unaffected creditor in the context of the present proceedings.

15. **THIS COURT ORDERS** that notwithstanding the terms of any order issued by this Court in the context of the present proceedings or the terms of the CCAA, none of the Payless Canada Entities shall be entitled to repudiate, disclaim or resiliate the Consulting Agreement or any of the agreements, contracts or arrangements in relation thereto entered into with the Consultant nor shall any claim in favour of the Consultant Agreement or related agreements, contracts or arrangements be compromised pursuant to any plan of compromise or arrangement.

16. **THIS COURT ORDERS** that each of the Payless Canada Entities is hereby authorized and directed to remit, in accordance with the Consulting Agreement, or any other agreement contract or arrangement in relation thereto, all amounts that become due to the Consultant thereunder.

17. **THIS COURT ORDERS** that no Claims shall attach to any amounts payable by any of the Payless Canada Entities to the Consultant pursuant to the Consulting Agreement, including any amounts that must be reimbursed by any of the Payless Canada Entities to the Consultant, and the Payless Canada Entity(ies) shall pay any such amounts to the Consultant free and clear of all Claims, notwithstanding any enforcement or other process, all in accordance with the Consulting Agreement.

18. **THIS COURT ORDERS** that notwithstanding (a) the pendency of these proceedings; (b) any application for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (“**BIA**”) in respect of any of the Payless Canada Entities or any bankruptcy order made pursuant to any such applications; (c) any assignment in bankruptcy made in respect of any of the Payless Canada Entities; (d) the provisions of any federal or provincial statute; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of encumbrances, contained in any existing loan documents, lease,

mortgage, security agreement, debenture, sublease, offer to lease or other document or agreement (collectively, the “**Agreement**”) which binds any of the Payless Canada Entities:

- (a) the Consulting Agreement and the transactions and actions provided for and contemplated therein (including the Sale Guidelines), including, without limitation, the payment of amounts due to the Consultant; and
- (b) the Assigned Landlord Rights,

shall be binding on any trustee in bankruptcy that may be appointed in respect of any of the Payless Canada Entities and shall not be void or voidable by any Person (as defined in the BIA), including any creditor of any of the Payless Canada Entities, nor shall they, or any of them, constitute or be deemed to be a preference, fraudulent conveyance, transfer at undervalue or other challengeable reviewable transaction, under the BIA or any applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law.

19. **THIS COURT ORDERS** that notwithstanding (a) the pendency of these proceedings; (b) any application for a bankruptcy order now or hereafter issued pursuant to the BIA in respect of any of the Payless Canada Entities or any bankruptcy order made pursuant to any such applications; (c) any assignment in bankruptcy made in respect of any of the Payless Canada Entities; (d) the provisions of any federal or provincial statute; or (e) any Agreement which binds any of the Payless Canada Entities, any obligation to clean up or repair any of the leased premises contained in this Order or the Sale Guidelines, shall be binding on any trustee in bankruptcy that may be appointed in respect to the Payless Canada Entities and shall not be void or voidable by any Person (as defined in the BIA), including any creditor of any of the Payless Canada Entities, nor shall they, or any of them, constitute or be deemed to be a preference, fraudulent conveyance, transfer at undervalue or other challengeable reviewable transaction,

under the BIA or any applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law.

Gift Cards, Returns and Coupons

20. **THIS COURT ORDERS** that for a period of thirty days (30) following the granting of the Initial Order, the Payless Canada Entities will honour gift cards that were issued by the Payless Canada Entities prior to the Sale Commencement Date in accordance with the Payless Canada Entities' customer gift card policies and procedures as they existed as of the date of the Initial Order.

21. **THIS COURT ORDERS** that the Payless Canada Entities shall continue to honour returns and exchanges of Merchandise sold prior to the Sale Commencement Date for a period of thirty days (30) following the granting of the Initial Order in compliance with the Payless Canada Entities' return policies in effect as of the date such item was purchased and any Merchandise sold after the Sale Commencement Date will not be subject to return or exchange.

22. **THIS COURT ORDERS** that upon entry of this Order, the Payless Canada Entities shall cease to honour coupons issued under any promotional programs.

General

23. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

24. **THIS COURT HEREBY REQUESTS** the aid and recognition of any Court, tribunal, regulatory or administrative bodies, having jurisdiction in Canada, the United States of America or elsewhere, to give effect to this Order and to assist the Payless Canada Entities, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such

assistance to the Payless Canada Entities and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Payless Canada Entities and the Monitor and their respective agents in carrying out the terms of this Order.

25. **THIS COURT ORDERS** that any interested party (including any of the Payless Canada Entities and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

Schedule "A"

SALE GUIDELINES

The following procedures shall apply to the Sale to be conducted at the Stores of Payless ShoeSource Canada Inc., Payless ShoeSource Canada GP Inc. and Payless ShoeSource Canada LP (collectively, the "**Merchant**"). All terms not herein defined shall have the meaning set forth in the Consulting Agreement by and between a joint venture comprised of Great American Group, LLC and Tiger Capital Group, LLC (collectively with their respective Canadian affiliate assignees, the "**Consultant**"), Payless Holdings, LLC and the Merchant dated as of February 12, 2019 (the "**Consulting Agreement**").

1. Except as otherwise expressly set out herein, and subject to: (i) the Initial Order in these proceedings dated February 19, 2019, (the "**Initial Order**") or any further Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**"); or (ii) any subsequent written agreement between the Merchant and the applicable landlord(s) (individually, a "**Landlord**" and, collectively, the "**Landlords**") and approved by the Consultant in writing, or (iii) as otherwise set forth herein, the Sale shall be conducted in accordance with the terms of the applicable leases/or other occupancy agreements to which the affected Landlords are privy for each of the affected Stores (individually, a "**Lease**" and, collectively, the "**Leases**"). However, nothing contained herein shall be construed to create or impose upon the Merchant or the Consultant any additional restrictions not contained in the applicable Lease or other occupancy agreement.
2. The Sale shall be conducted so that each of the Stores remains open during its normal hours of operation provided for in its respective Lease until the respective Sale Termination Date for such Store. The Sale at the Stores shall end by no later than the Sale Termination Date. Rent payable under the respective Leases shall be paid in accordance with the terms of the Initial Order.
3. The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws and regulations, unless otherwise set out herein or otherwise ordered by the Court.
4. All display and hanging signs used by the Consultant in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. Notwithstanding anything to the contrary contained in the Leases, the Consultant may advertise the Sale at the Stores as an "everything on sale", an "everything must go", a "store closing" or similar theme sale at the Stores (provided however that no signs shall advertise the Sale as a "bankruptcy", a "going out of business" or a "liquidation" sale it being understood that the French equivalent of "clearance" is "liquidation" and is permitted to be used). Forthwith upon request from a Landlord, the Landlord's counsel, the Merchant or the Monitor, the Consultant shall provide the proposed signage packages along with the proposed dimensions and number of signs (as approved by the Merchant pursuant to the Consulting Agreement) by e-mail or facsimile to the applicable Landlords or to their counsel of record. Where the provisions of the Lease conflict with these Sale Guidelines, these Sale Guidelines shall govern. The Consultant shall not use neon or day-glow or handwritten signage (unless otherwise contained in the sign package, including "you pay" or "topper" signs). In addition, the Consultant shall be permitted to utilize exterior banners/signs at stand alone or strip mall Stores or enclosed mall Stores with a separate entrance from the exterior of the enclosed mall, provided, however, that where such

banners are not permitted by the applicable Lease and the Landlord requests in writing that the banners are not to be used, no banners shall be used absent further Order of the Court, which may be sought on an expedited basis on notice to the service list in the CCAA proceeding (the "**Service List**"). Any banners used shall be located or hung so as to make clear that the Sale is being conducted only at the affected Store and shall not be wider than the premises occupied by the affected Store. All exterior banners shall be professionally hung and to the extent that there is any damage to the façade of the premises of a Store as a result of the hanging or removal of the exterior banner, such damage shall be professionally repaired at the expense of the Consultant. If a Landlord is concerned with "store closing" signs being placed in the front window of a Store or with the number or size of the signs in the front window, the Consultant and the Landlord will discuss the Landlord's concerns and work to resolve the dispute.

5. The Consultant shall be permitted to utilize sign walkers and street signage; provided, however, such sign walkers and street signage shall not be located on the shopping centre or mall premises.
6. The Consultant shall not make any alterations to interior or exterior Store lighting, except as authorized pursuant to the applicable Lease. The hanging of exterior banners or other signage, where permitted in accordance with the terms of these guidelines, shall not constitute an alteration to a Store.
7. Conspicuous signs shall be posted in the cash register areas of each Store to the effect that all sales are "final".
8. The Consultant shall not distribute handbills, leaflets or other written materials to customers outside of any of the Stores on any Landlord's property, unless permitted by the applicable Lease or, if distribution is customary in the shopping centre in which the Store is located. Otherwise, the Consultant may solicit customers in the Stores themselves. The Consultant shall not use any giant balloons, flashing lights or amplified sound to advertise the Sale or solicit customers, except as permitted under the applicable Lease, or agreed to by the Landlord.
9. At the conclusion of the Sale in each Store, the Consultant shall arrange that the premises for each Store are in "broom-swept" and clean condition, and shall arrange that the Stores are in the same condition as on the commencement of the Sale, ordinary wear and tear excepted. No property of any Landlord of a Store shall be removed or sold during the Sale. No permanent fixtures (other than FF&E which for clarity is owned by the Merchant) may be removed without the applicable Landlord's written consent unless otherwise provided by the applicable Lease. Any fixtures or personal property left in a Store after the Sale Termination Date in respect of which the applicable Lease has been disclaimed by the Merchant shall be deemed abandoned, with the applicable Landlord having the right to dispose of the same as the Landlord chooses, without any liability whatsoever on the part of the Landlord.
10. Subject to the terms of paragraph 9 above, the Consultant may sell Offered FF&E which is located in the Stores during the Sale. The Merchant and the Consultant may advertise the sale of Offered FF&E consistent with these guidelines on the understanding that any applicable Landlord may require that such signs be placed in discreet locations acceptable to the applicable Landlord, acting reasonably. Additionally, the purchasers of any Offered FF&E sold during the Sale shall only be permitted to remove the Offered

FF&E either through the back shipping areas designated by the applicable Landlord, or through other areas after regular store business hours, or through the front door of the Store during store business hours if the Offered FF&E can fit in a shopping bag, with applicable Landlord's supervision as required by the applicable Landlord. The Consultant shall repair any damage to the Stores resulting from the removal of any Offered FF&E by Consultant or by third party purchasers of Offered FF&E from Consultant.

11. The Merchant hereby provides notice to the Landlords of the Merchant and the Consultant's intention to sell and remove Offered FF&E from the Stores. The Consultant will arrange a walk through with each Landlord that requests a walk through with the Consultant to identify the Offered FF&E subject to the sale. The relevant Landlord shall be entitled to have a representative present in the Store to observe such removal. If the Landlord disputes the Consultant's entitlement to sell or remove any FF&E under the provisions of the Lease, such FF&E shall remain on the premises and shall be dealt with as agreed between the Merchant, the Consultant and such Landlord, or by further Order of the Court upon application by the Merchant on at least two (2) days' notice to such Landlord. If the Merchant has disclaimed or resiliated the Lease governing such Store in accordance with the CCAA and the Initial Order, it shall not be required to pay rent under such Lease pending resolution of any such dispute (other than rent payable for the notice period provided for in the CCAA and the Initial Order, and the disclaimer or resiliation of the Lease) shall be without prejudice to the Merchant's or Consultant's claim to the FF&E in dispute.
12. If a notice of disclaimer or resiliation is delivered pursuant to the CCAA and the Initial Order to a Landlord while the Sale is ongoing and the Store in question has not yet been vacated, then: (a) during the notice period prior to the effective time of the disclaimer or resiliation, the applicable Landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Merchant and the Consultant 24 hours' prior written notice; and (b) at the effective time of the disclaimer or resiliation, the relevant Landlord shall be entitled to take possession of any such Store without waiver of or prejudice to any claims or rights such Landlord may have against the Merchant in respect of such Lease or Store, provided that nothing herein shall relieve such Landlord of its obligation to mitigate any damages claimed in connection therewith.
13. The Consultant and its agents and representatives shall have the same access rights to the Stores as the Merchant under the terms of the applicable Lease, and the applicable Landlords shall have the rights of access to the Stores during the Sale provided for in the applicable Lease (subject, for greater certainty, to any applicable stay of proceedings).
14. The Merchant and the Consultant shall not conduct any auctions of Merchandise, Additional Merchant Goods, or Offered FF&E at any of the Stores.
15. The Consultant shall be entitled, as agent for the Merchant pursuant to and in accordance with the Consulting Agreement to include in the Sale the Additional Merchant Goods to the extent such are on-order goods from the Merchant's existing vendors.
16. The Consultant shall designate a party to be contacted by the Landlords should a dispute arise concerning the conduct of the Sale. The initial contact person for the Consultant shall be [Ashley Taylor] who may be reached by phone at [416-869-5236] or email at [ataylor@stikeman.com]. If the parties are unable to resolve the dispute between themselves, the Landlord or Merchant shall have the right to schedule a "status hearing"

before the Court on no less than two (2) days written notice to the other party or parties, during which time the Consultant shall cease all activity in dispute other than activity expressly permitted herein, pending the determination of the matter by the Court; provided, for greater certainty, that if a banner has been hung in accordance with these Sale Guidelines and is thereafter the subject of a dispute, the Consultant shall not be required to take any such banner down pending determination of the dispute.

17. Nothing herein is, or shall be deemed to be a consent by any Landlord to the sale, assignment or transfer of any Lease, or to grant to the Landlord any greater rights than already exist under the terms of any applicable Lease.
18. These Sale Guidelines may be amended by written agreement between the Merchant, the Consultant and any applicable Landlord (provided that such amended Sale Guidelines shall not affect or bind any other Landlord not privy thereto without further Order of the Court approving the amended Sale Guidelines).

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PAYLESS SHOESOURCE CANADA INC. AND PAYLESS SHOESOURCE CANADA GP INC.

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

PROCEEDINGS COMMENCED AT TORONTO

**LIQUIDATION CONSULTING AGREEMENT APPROVAL
ORDER**

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ShoeSource Canada GP Inc. and Payless ShoeSource
Canada LP*

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PAYLESS SHOESOURCE CANADA INC. AND PAYLESS SHOESOURCE CANADA GP INC.

**ONTARIO
SUPERIOR COURT OF JUSTICE
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PROCEEDINGS COMMENCED AT TORONTO

NOTICE OF MOTION

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TAB 2

Court File No.
CV-19-00614629-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE REGIONAL) TUESDAY, THE 19th
)
SENIOR JUSTICE MORAWETZ) DAY OF FEBRUARY, 2019



IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PAYLESS
SHOESOURCE CANADA INC. AND PAYLESS SHOESOURCE CANADA GP INC.

(the "Applicants")

INITIAL ORDER

THIS APPLICATION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Stephen Marotta sworn February 18, 2019 (the "**Marotta Affidavit**") and the Exhibits thereto, and the pre-filing report dated February 19, 2019 of FTI Consulting Canada Inc. ("**FTI**"), in its capacity as the proposed Monitor of the Payless Canada Entities (as defined below) (the "**Pre-Filing Report**") and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicants and Payless ShoeSource Canada LP (each a "**Payless Canada Entity**" and collectively, the "**Payless Canada Entities**"), counsel to FTI, counsel to Wells Fargo Bank, National Association (the "**ABL Agent**"), counsel to the ad hoc group of lenders under the Term Loan Credit Facility (as defined in the Marotta Affidavit), counsel to Cortland Products Corp. (the "**Term Loan Agent**") and counsel to the Liquidation Consultant (as defined in the Marotta Affidavit), and no one appearing for any other party

although duly served as appears from the affidavit of service of Monique Sassi sworn February 19, 2019 and on reading the consent of FTI to act as the Monitor,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. THIS COURT ORDERS AND DECLARES that the Applicants are companies to which the CCAA applies. Although not an Applicant, Payless ShoeSource Canada LP shall be bound by this Order as though it were an Applicant, enjoy the benefits of the protections and authorizations provided by this Order and shall be subject to the restrictions contained herein.

PLAN OF ARRANGEMENT

3. THIS COURT ORDERS that the Payless Canada Entities, individually or collectively, shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

POSSESSION OF PROPERTY AND OPERATIONS

4. THIS COURT ORDERS that the Payless Canada Entities shall remain in possession and control of their respective current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, each of the Payless Canada Entities shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property. Each of the Payless Canada Entities shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, advisors, experts, accountants, counsel and such other persons (collectively, the "**Assistants**") currently retained or employed by or with respect to it, with liberty to retain such further Assistants, including without limitation, a real estate advisor to assist in the monetization of the Payless Canada Entities' real property leases, as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. THIS COURT ORDERS that the Payless Canada Entities shall be entitled to continue to utilize the central cash management system currently in place as described in the Marotta Affidavit or replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by each of the Payless Canada Entities of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Payless Canada Entities, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. THIS COURT ORDERS that each of the Payless Canada Entities' existing depository and disbursement banks (collectively, the "**Banks**") is authorized to debit the applicable Payless Canada Entity's accounts in the ordinary course of business without the need for further order of this Court for: (i) all cheques drawn on the Payless Canada Entities' accounts which are cashed at such Bank's counters or exchanged for cashier's cheques by the payees thereof prior to the date of this Order; (ii) all cheques or other items deposited in one of Payless Canada Entities' accounts with such Bank prior to the date of this Order which have been dishonoured or returned unpaid for any reason, together with any fees and costs in connection therewith, to the same extent the Payless Canada Entities were responsible for such items prior to the date of this Order; and (iii) all undisputed pre-filing amounts outstanding as of the date hereof, if any, owed to any Bank as service charges for the maintenance of the Cash Management System.

7. THIS COURT ORDERS that any of the Banks may rely on the representations of the applicable Payless Canada Entity with respect to whether any cheques or other payment order drawn or issued by the Payless Canada Entities prior to the date of this Order should be honoured pursuant to this or any other order of this Court, and such Bank shall not have any liability to any party for relying on such representations by the applicable Payless Canada Entities as provided for herein.

8. THIS COURT ORDERS that (i) those certain existing deposit agreements between the Banks shall continue to govern the post-filing cash management relationship between the Payless Canada Entities and the Banks, and that all of the provisions of such agreements, including, without limitation, the termination and fee provisions, shall remain in full force and effect, and (ii) either the Payless Canada Entities or the Banks may, without further Order of this Court, implement changes to the Cash Management Systems and procedures in the ordinary course of business pursuant to terms of those certain existing deposit agreements, including, without limitation, the opening and closing of bank accounts.

9. THIS COURT ORDERS that each of the Payless Canada Entities shall be entitled but not required to pay the following expenses and satisfy the following obligations whether incurred prior to, on or after the date of this Order to the extent such expenses are incurred and payable by such Payless Canada Entity:

- (a) all outstanding and future wages, salaries, employee benefits (including, without limitation, employee medical, dental, vision, insurance and similar benefit plans or arrangements), vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements, and all other payroll and benefits processing and servicing expenses;
- (b) the fees and disbursements of any Assistants retained or employed by or with respect to any of the Payless Canada Entities in respect of these proceedings, in accordance with the terms of their respective engagements; and
- (c) with the consent of the Monitor, amounts owing for goods or services supplied to the Payless Canada Entities prior to the date of this Order by third party suppliers if, in the opinion of the Payless Canada Entities following consultation with the Monitor, such payment is necessary to maintain the uninterrupted operations of the Business.

10. THIS COURT ORDERS that, except as otherwise provided to the contrary herein each of the Payless Canada Entities shall be entitled but not required to pay all reasonable expenses incurred by such Payless Canada Entity in carrying on the Business in the ordinary course on or

after the date of this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to such Payless Canada Entity following the date of this Order.

11. THIS COURT ORDERS that each of the Payless Canada Entities shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services taxes, harmonized sales taxes, or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by such Payless Canada Entity in connection with the sale of goods and services by such Payless Canada Entity, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not remitted until on or after the date of this Order, and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by any of the Payless Canada Entities.

12. THIS COURT ORDERS that, except (i) as specifically permitted herein; or (ii) for repayments of the obligations owing under the ABL Credit Facility (as defined in the Marotta Affidavit) in the amounts noted as Canadian Excess Proceeds in the Cash Flow Statement attached to the Pre-Filing Report, as such Cash Flow Statement may be amended from time to time pursuant to a further Order of this Court or an Order in the U.S. Proceedings, each of the Payless Canada Entities is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by any of the Payless Canada Entities to any of their creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

12A. THIS COURT ORDERS that the payments to be made by each of the Payless Canada Entities as authorized by this Order shall be materially consistent with the Cash Flow Statement, including without limitation the establishment and funding of the Reserve (as detailed in the Cash Flow Statement) in a separate Payless Canada Entity bank account (the "**Reserve Account**"). Payments shall only be made from the Reserve Account with the consent of the Monitor to satisfy those items for which the Reserve was established, or by further Order of the Court. For greater certainty, no Reserve amounts shall constitute Canadian Excess Proceeds or be otherwise used to repay the ABL Credit Facility without further Order of the Court, regardless of whether such amounts have been deposited into the Reserve Account.

12B. THIS COURT ORDERS that the Payless Canada Entities, in consultation with the Monitor, shall provide periodic reporting to the ABL Agent and the Term Loan Agent on a weekly basis (unless otherwise agreed) until the ABL Credit Facility (in the case of reporting to the ABL Agent) and the Term Loan Credit Facility (in the case of reporting to the Term Loan Agent) is repaid in full, with respect to the actual and projected receipts and disbursements of the Payless Canada Entities in a form to be agreed upon between the Payless Canada Entities each of the ABL Agent and the Term Loan Agent, in consultation with the Monitor.

RESTRUCTURING

13. THIS COURT ORDERS that each of the Payless Canada Entities shall, subject to such requirements as are imposed by the CCAA, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding \$100,000 in any one transaction or \$500,000 in the aggregate; and
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and
- (c) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit each of the Payless Canada Entities to proceed with an orderly restructuring of the Business.

REAL PROPERTY LEASES

14. THIS COURT ORDERS that until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Payless Canada Entity which is responsible for such payment shall pay, without duplication, all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) but, ~~excluding accelerated rent or penalties, fees or other charges arising as a result of the insolvency of any of the Payless Canada Entities or any affiliate thereof, the making of this Order, or the commencement of any insolvency proceeding (including, without limitation, the U.S. Proceedings, as defined in the Cross-Border Protocol) in respect of any of the Payless Canada Entities or any affiliate thereof in the United States or any other foreign jurisdiction (a "Foreign Proceeding")~~ or as otherwise may be negotiated between the applicable Payless Canada Entity and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

15. THIS COURT ORDERS that the relevant Payless Canada Entity shall provide each of the relevant landlords with notice of the relevant Payless Canada Entity's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased

premises to observe such removal and, if the landlord disputes the relevant Payless Canada Entity's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the relevant Payless Canada Entity, or by further Order of this Court upon application by the Payless Canada Entities on at least two (2) days notice to such landlord and any such secured creditors. If any of the Payless Canada Entities disclaims or resiliates the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to the relevant Payless Canada Entity's claim to the fixtures in dispute.

16. THIS COURT ORDERS that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA by any of the Payless Canada Entities, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the relevant Payless Canada Entity and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the relevant Payless Canada Entity in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

8 ~~intentionally deleted~~
17. ~~THIS COURT ORDERS that, notwithstanding anything to the contrary in any real property lease or elsewhere, the Payless Canada Entities shall have no obligation to stock or restock and/or operate from any of its locations.~~ *9/13*

NO PROCEEDINGS AGAINST ANY OF THE PAYLESS CANADA ENTITIES, THE BUSINESS OR THE PROPERTY

18. THIS COURT ORDERS that until and including March 21, 2019, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of any of the Payless Canada Entities or the Monitor, or affecting any of the Business or the Property,

except with the written consent of the applicable Payless Canada Entity(ies) and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of any of the Payless Canada Entities or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

19. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of any of the Payless Canada Entities or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the applicable Payless Canada Entity(ies) and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower any of the Payless Canada Entities to carry on any business which such entity is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

20. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by any of the Payless Canada Entities, except with the written consent of the applicable Payless Canada Entity(ies) and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

21. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with any of the Payless Canada Entities or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll and benefits services, customs clearing, warehouse and logistics, insurance, transportation services, utility or other services to the Business or any of the Payless Canada Entities, are hereby restrained until

further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by any of the Payless Canada Entities, and that each of the Payless Canada Entities shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the appropriate Payless Canada Entity(ies) in accordance with normal payment practices of such Payless Canada Entity(ies) or such other practices as may be agreed upon by the supplier or service provider and each of the appropriate Payless Canada Entity(ies) and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

22. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to any of the Payless Canada Entities. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

23. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of any of the Payless Canada Entities with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of any of the Payless Canada Entities whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligation.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

24. THIS COURT ORDERS that each of the Payless Canada Entities shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of each of the Payless Canada Entities after the commencement of the within

proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

25. THIS COURT ORDERS that the directors and officers of each of the Payless Canada Entities shall, as security for the indemnity provided in paragraph 24 of this Order, be entitled to the benefit of and are hereby granted (i) a charge on the funds in the Reserve Account in the amount of the funds held in the Reserve Account at any point in time (the "**Directors' Reserve Charge**") and (ii) a charge on the Property which charge shall not exceed a maximum amount of USD\$4 million until March 21, 2019 and thereafter shall automatically reduce without any further order of this Court, to the maximum amount of USD\$2 million (the "**Directors' General Charge**" and together with the Directors' Reserve Charge, the "**Directors' Charge**"). The Directors' Charge shall have the priority set out in paragraphs 45 and 47 herein.

26. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) each of the Payless Canada Entities' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 24 of this Order.

APPROVAL OF THE CRO ENGAGEMENT

27. THIS COURT ORDERS that the agreement dated as of January 24, 2019 pursuant to which the Payless Canada Entities have engaged Ankura Consulting Group, LLC ("**Ankura**") to act as Chief Restructuring Organization (the "**CRO**") through the services of Stephen Marotta, Adrian Frankum and other employees of Ankura, a copy of which is attached as Exhibit "**H**" to the Marotta Affidavit as may be amended by the parties thereto with the consent of the Monitor (the "**CRO Engagement Letter**"), and the appointment of the CRO pursuant to the terms thereof, are hereby approved, including, without limitation, the payment of the fees and expenses contemplated thereby.

28. THIS COURT ORDERS that, subject to the provisions of the CCAA, this Order and any subsequent Order of this Court, the CRO is authorized to exercise and perform the powers,

responsibilities and duties as described in the CRO Engagement Letter and subject to the terms thereof, together with such other powers, responsibilities and duties as may be agreed upon by the CRO and approved by this Court (collectively, the “**CRO Powers**”), including, without limitation, the power to:

- (a) make decisions with respect to the day to day aspects of the management and operations of the Business, including, without limitation, organization, human resources, marketing, sales, operations, supply chain, finance and administration, in such manner and take such actions and steps, as the CRO deems reasonably necessary and appropriate, and execute such documents and writings as required to cause or permit each of the Payless Canada Entities to do all things authorized, directed and permitted pursuant to the CCAA, the terms of this Order, and any subsequent Orders of this Court, subject to the terms of those Orders;
- (b) subject to the terms of this Order, realize and dispose of the Property of each of the Payless Canada Entities on behalf of such Payless Canada Entity(ies), including, without limitation, to negotiate and enter into agreements on behalf of each of the Payless Canada Entities with respect to the sale or other disposition of all or any part of the Property;
- (c) represent each of the Payless Canada Entities in any negotiations with any other stakeholders and their professional constituencies, including vendors and suppliers;
- (d) assist the Payless Canada Entities with store closures and liquidations;
- (e) evaluate the short-term company-prepared cash flows and financing requirements of the Payless Canada Entities as they relate to these proceedings;
- (f) assist the Payless Canada Entities in the preparation and oversight of financial statements and schedules, monthly operating reports, and other information required in these proceedings, as applicable;
- (g) assist the Payless Canada Entities in obtaining court approval and administration of financing including developing forecasts and information, and any insolvency related claims management and reconciliation process;

- (h) work with the Payless Canada Entities, and their retained professionals, as appropriate, to assess any offer(s) made to one or more of the Payless Canada Entities;
- (i) communicate with and provide information to the Monitor, and its advisors, regarding the Business and affairs of each of the Payless Canada Entities;
- (j) assist the Monitor, as requested by the Monitor, in connection with the powers given to the Monitor; and
- (k) work with the Assistants and the Monitor in respect of all of the foregoing;

provided that, in each case such actions, agreements, expenses and obligations shall be construed to be those of the appropriate Payless Canada Entity and not of the CRO personally.

29. THIS COURT ORDERS that none of the CRO, Stephen Marotta, Adrian Frankum or such other employees of Ankura, shall be or be deemed to be a director, officer or employee of any of the Payless Canada Entities.

30. THIS COURT ORDERS that the CRO shall ~~not, as a result of the performance of its~~ ^{if deemed to be in possession or} ~~obligations and duties in accordance with the terms of the CRO Engagement Letter and this Order, be deemed to be in Possession (as defined below) of any of the Property within the meaning of any Environmental Legislation (as defined below); provided, however, if the CRO is nevertheless later found to be in Possession of any Property, then the CRO, as the case may be,~~ ~~shall be deemed to be a Person who has been lawfully appointed to take, or has lawfully taken, possession or control of such Property for the purposes of section 14.06(1.1)(c) of the Bankruptcy and Insolvency Act of Canada (the "BIA") and shall be entitled to the benefits and protections in relation to the applicable Payless Canada Entity and such Property as provided by section 14.06(2) of the BIA to a "trustee" in relation to an insolvent Person and its property.~~ ^{control}

31. THIS COURT ORDERS that nothing in the CRO Engagement Letter or this Order shall be construed as resulting in the CRO being an employer, successor employer, responsible person or operator within the meaning of any statute, regulation or rule of law, or equity for any purpose whatsoever.

32. THIS COURT ORDERS that the CRO shall not have any liability with respect to any losses, claims, damages or liabilities, of any nature or kind, to any Person from and after the date of this Order except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct on the part of the CRO, provided further that in no event shall the liability of the CRO exceed the quantum of the fees paid to the CRO.

33. THIS COURT ORDERS that no action or other proceeding shall be commenced directly, or by way of counterclaim, third party claim or otherwise, against or in respect of the CRO, and all rights and remedies of any Person against or in respect of the CRO are hereby stayed and suspended, except with the written consent of the CRO and the Monitor, or with leave of this Court on notice to the Payless Canada Entities, the Monitor, and the CRO. Notice of any such motion seeking leave of this Court shall be served upon the Payless Canada Entities, the Monitor, and the CRO at least ten (10) days prior to the return date of any such motion for leave.

34. THIS COURT ORDERS that the obligations of each of the Payless Canada Entities to the CRO pursuant to the CRO Engagement Letter shall be treated as unaffected and may not be compromised in any Plan or proposal filed under the BIA in respect of any of the Payless Canada Entities.

35. THIS COURT ORDERS that (i) any indemnification obligations of any of the Payless Canada Entities in favour of the CRO and (ii) payment obligations of any of the Payless Canada Entities to the CRO shall be entitled to the benefit of and shall form part of the Administration Charge (as defined below) set out herein.

APPOINTMENT OF MONITOR

36. THIS COURT ORDERS that FTI is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Business and financial affairs of each of the Payless Canada Entities with the powers and obligations set out in the CCAA or set forth herein and that each of the Payless Canada Entities and its shareholders, officers, directors, and Assistants and the CRO shall advise the Monitor of all material steps taken by such Payless Canada Entity pursuant to this Order, and shall co-operate fully with the Monitor in the exercise

of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

37. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor each of the Payless Canada Entities' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) advise each of the Payless Canada Entities in its development of the Plan and any amendments to the Plan;
- (d) assist each of the Payless Canada Entities, to the extent required by the Payless Canada Entity, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (e) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of each of the Payless Canada Entities, to the extent that is necessary to adequately assess the Payless Canada Entities' business and financial affairs or to perform its duties arising under this Order;
- (f) assist each of the Payless Canada Entities with respect to any Foreign Proceeding and monitor and report to this Court, as it deems appropriate, on the Foreign Proceeding;
- (g) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (h) perform such other duties as are required by this Order or by this Court from time to time.

38. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

39. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and similar legislation in other provinces and territories and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

40. THIS COURT ORDERS that the Monitor shall provide any creditor of any of the Payless Canada Entities with information provided by such Payless Canada Entity in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by any of the Payless Canada Entities is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the applicable Payless Canada Entity(ies) may agree.

41. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save

and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

42. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Payless Canada Entities shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Payless Canada Entities as part of the costs of these proceedings. The Payless Canada Entities are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Payless Canada Entities in accordance with the payment terms, including the use of retainers as previously paid, as agreed between or on behalf of the Payless Canada Entities and such parties.

43. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

44. THIS COURT ORDERS that the CRO, the Monitor, counsel to the Monitor, and counsel to the Payless Canada Entities shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of USD\$2 million, as security for the professional fees and disbursements incurred by the CRO, the Monitor, counsel to the Monitor, and counsel for the Payless Canada Entities at each of their standard rates and charges and on the terms set forth in their respective engagement letters, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 45 and 47 hereof.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

45. THIS COURT ORDERS that the priorities of the Directors' Charge and the Administration Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of USD\$2 million); and

Second – Directors' Charge (for the amounts set out in paragraph 25 hereof).

46. THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge or the Administration Charge (collectively, the "**Charges**") shall not be required, and that the

Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

47. THIS COURT ORDERS that each of the Directors' Charge and the Administration Charge (each as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person notwithstanding the order of perfection or attachment, other than any validly perfected security interest under the *Personal Property Security Act* (Ontario) or such other applicable provincial legislation that has not been served with notice of this Order. For the avoidance of doubt: (i) the Administration Charge and (ii) the Directors' Charge shall rank in priority to the security interest of the ABL Agent and the Term Loan Agent.

48. THIS COURT ORDERS that the Payless Canada Entities shall be entitled, on a subsequent motion on notice to those Persons likely to be affected thereby, to seek priority of the Charges ahead of any Encumbrance over which the Charges have not obtained priority.

49. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, none of the Payless Canada Entities shall grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Directors' Charge or the Administration Charge, unless the applicable Payless Canada Entity(ies) also obtains the prior written consent of the Monitor and the beneficiaries of the Directors' Charge and/or the Administration Charge, as applicable, or further Order of this Court.

50. THIS COURT ORDERS that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy or receivership order(s) issued pursuant to the BIA or otherwise, or any bankruptcy or receivership order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar

provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds any of the Payless Canada Entities, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by any of the Payless Canada Entities of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any obligation or Agreement caused by or resulting from the creation of the Charges; and
- (c) the payments made by any of the Payless Canada Entities pursuant to this Order, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

51. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the applicable Payless Canada Entity(ies) interest in such real property leases.

CROSS-BORDER PROTOCOL

52. THIS COURT ORDERS that the cross-border protocol in the form attached as Schedule “A” hereto (the “**Cross-Border Protocol**”) is hereby approved and shall become effective upon its approval by the United States Bankruptcy Court for the Eastern District of Missouri, and the parties to these proceedings and any other Person shall be governed by and shall comply with the Cross-Border Protocol.

SERVICE AND NOTICE

53. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in *The Globe and Mail* (National Edition) and *Le Devoir* a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against any of the Payless Canada Entities of more than

\$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

54. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL <http://cfcanada.fticonsulting.com/paylesscanada/> (the "**Website**").

55. THIS COURT ORDERS that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the "**Service List**"). The Monitor shall post the Service List, as may be updated from time to time, on the Website, provided that the Monitor shall have no liability in respect of the accuracy of, or the timeliness of making any changes to, the Service List.

56. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Payless Canada Entities and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to any of the Payless Canada Entities' creditors or other interested parties at their respective addresses as last shown on the records of any of the Payless Canada Entities and that any such service or distribution shall be deemed to be received (a) if sent by courier, on the next business day following the date of forwarding thereof, (b) if delivered by personal delivery or facsimile or other electronic transmission, on the day so delivered, and (c) if sent by ordinary mail, on the third business day after mailing.

57. THIS COURT ORDERS that the Payless Canada Entities and the Monitor and their respective counsel are at liberty to serve or distribute this Order, any other materials and

orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Payless Canada Entities' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

GENERAL

58. THIS COURT ORDERS that each of the Payless Canada Entities or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions concerning the discharge of its powers and duties under this Order or in the interpretation or application of this Order.

59. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of any of the Payless Canada Entities, the Business or the Property.

60. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States or elsewhere, to give effect to this Order and to assist each of the Payless Canada Entities, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to each of the Payless Canada Entities and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist each of the Payless Canada Entities and the Monitor and their respective agents in carrying out the terms of this Order.

61. THIS COURT ORDERS that each of the Payless Canada Entities and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that Payless ShoeSource Canada Inc. is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

62. THIS COURT ORDERS that any interested party (including any of the Payless Canada Entities and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

63. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

FEB 19 2019

PER / PAR: RW

Schedule "A"

CROSS-BORDER INSOLVENCY PROTOCOL

This cross-border insolvency protocol (the "Protocol") shall govern the conduct of all parties in interest in the Insolvency Proceedings (as such term is defined herein).

The Guidelines for Communication and Cooperation Between Courts in Cross-Border Insolvency Matters (the "Guidelines"), annexed as "Schedule A" hereto, shall be incorporated by reference and form part of this Protocol. To the extent there is any discrepancy between the Protocol and the Guidelines, this Protocol shall prevail.

A. Background

1. On February 18, 2019 (the "Petition Date"), Payless Holdings LLC and certain of its subsidiaries and affiliates (collectively, the "Debtors")¹ commenced cases (collectively, the "U.S. Proceedings") under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Eastern District of Missouri.

2. On February 19, 2019, certain of the Debtors, specifically Payless ShoeSource Canada Inc. and Payless ShoeSource Canada GP Inc., (together with Payless ShoeSource Canada LP, the "Canadian Debtors"), also sought protection in Canada (the "Canadian Proceedings" and

¹ The Debtors (as defined herein) in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Payless Holdings LLC [5704]; Payless Intermediate Holdings LLC [5190]; WBG-PSS Holdings LLC [0673]; Payless Inc. [3160]; Payless Finance, Inc. [2101]; Collective Brands Services, Inc. [7266]; PSS Delaware Company 4, Inc. [1466]; Shoe Sourcing, Inc. [4075]; Payless ShoeSource, Inc. [4097]; Eastborough, Inc. [2803]; Payless Purchasing Services, Inc. [3043]; Payless ShoeSource Merchandising, Inc. [0946]; Payless Gold Value CO, Inc. [3581]; Payless ShoeSource Distribution, Inc. [0944]; Payless ShoeSource Worldwide, Inc. [6884]; Payless NYC, Inc. [4126]; Payless ShoeSource of Puerto Rico, Inc. [9017]; Payless Collective GP, LLC [2940]; Collective Licensing, LP [1256]; Collective Licensing International LLC [5451]; Clinch, LLC [9836]; Collective Brands Franchising Services, LLC [3636]; Payless International Franchising, LLC [6448]; PSS Canada, Inc. [4969]; Payless ShoeSource Canada Inc. [4180]; Payless ShoeSource Canada GP Inc. [4182]; and Payless ShoeSource Canada LP [4179]. With respect to certain taxing authorities, the Debtors' address is 2001 Bryan Street, Suite 800, Dallas, TX 75201. However, the location of Debtor Payless Holdings LLC's corporate headquarters and the Debtors' service address is: c/o Payless ShoeSource Inc., 3231 S.E. 6th Avenue, Topeka, Kansas 66607.

together with the U.S. Proceedings, the “Insolvency Proceedings”) by filing an application under *the Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “CCAA”) with the Ontario Superior Court of Justice (Commercial List) (the “Canadian Court” and together with the U.S. Court, the “Courts” and each individually, a “Court”). The remaining Debtors in these chapter 11 cases are domiciled in the United States (the “U.S. Debtors”).

3. The Canadian Debtors sought an initial order from the Canadian Court (as may be amended from time to time, the “CCAA Order”), *inter alia*, (a) granting the Canadian Debtors relief under the CCAA; (b) appointing FTI Consulting Canada Inc. as monitor of the Canadian Debtors (the “Monitor”), with the rights, powers, duties and limitations upon liabilities set forth in the CCAA Order; and (c) granting a stay of proceedings in respect of the Canadian Debtors.

4. The Debtors continue to operate and maintain their businesses as debtors in possession pursuant to Bankruptcy Code sections 1107 and 1108. The Office of the United States Trustee (the “U.S. Trustee”) may appoint an official committee of unsecured creditors (if appointed, the “U.S. Creditors’ Committee”) in the U.S. Proceedings.

B. Purpose and Goals

5. While the U.S. Proceedings and the Canadian Proceedings are full and separate proceedings pending in the United States of America (the “U.S.”) and Canada, the implementation of basic administrative procedures and cross-border guidelines is both necessary and desirable to coordinate certain activities in the Insolvency Proceedings, protect the rights of parties thereto and ensure the maintenance of the Court’s independent jurisdiction and comity. Accordingly, this Protocol has been developed to promote the following mutually desirable goals and objectives in the Insolvency Proceedings:

- (a) harmonize and coordinate activities in the Insolvency Proceedings before the Courts;
- (b) promote the orderly and efficient administration of the Insolvency Proceedings to, among other things, maximize the efficiency of the Insolvency Proceedings, reduce the costs associated therewith and avoid duplication of effort;
- (c) honor the independence and integrity of the Courts and other courts and tribunals of the U.S. and Canada, respectively;
- (d) promote international cooperation and respect for comity among the Courts, the Debtors, the U.S. Creditors’ Committee, the U.S. Representatives (defined below), the Canadian Representatives (defined below and together with the U.S. Representatives, the “Estate Representatives”), the U.S. Trustee and other creditors and interested parties in the Insolvency Proceedings;
- (e) facilitate the fair, open and efficient administration of the Insolvency Proceedings for the benefit of all of the creditors and interested parties of the Debtors, wherever located; and
- (f) implement a framework of general principles to address basic administrative issues arising out of the cross-border and international nature of the Insolvency Proceedings.

C. Comity and Independence of the Courts

6. The approval and implementation of this Protocol shall not divest or diminish the U.S. Court’s and the Canadian Court’s independent jurisdiction over the subject matter of the

U.S. Proceedings and the Canadian Proceedings, respectively. By approving and implementing this Protocol, neither the U.S. Court, the Canadian Court, the Debtors, the Estate Representatives nor any creditors or interested parties shall be deemed to have approved or engaged in any infringement on the sovereignty of the U.S. or Canada.

7. The U.S. Court shall have sole and exclusive jurisdiction and power over the conduct of the U.S. Proceedings and the hearing and determination of matters arising in the U.S. Proceedings. The Canadian Court shall have sole and exclusive jurisdiction and power over the conduct of the Canadian Proceedings and the hearing and determination of matters arising in the Canadian Proceedings.

8. In accordance with the principles of comity and independence established in the preceding paragraphs, nothing contained herein shall be construed to:

- (a) increase, decrease or otherwise modify the independence, sovereignty or jurisdiction of the U.S. Court, the Canadian Court or any other court or tribunal in the U.S. or Canada, including the ability of any such court or tribunal to provide appropriate relief under applicable law on an ex parte or “limited notice” basis;
- (b) require the U.S. Court to take any action that is inconsistent with its obligations under the laws of the U.S.;
- (c) require the Canadian Court to take any action that is inconsistent with its obligations under the laws of Canada;
- (d) require any of the Debtors, the Monitor, the U.S. Creditors’ Committee, the Estate Representatives or the U.S. Trustee to take any action or refrain from taking any action that would result in a breach of any duty imposed on them by any applicable law;
- (e) authorize any action that requires the specific approval of one or both of the Courts under the Bankruptcy Code or the CCAA after appropriate notice and a hearing (except to the extent that such action is specifically described in this Protocol); or
- (f) preclude any of the Debtors, the Monitor, the U.S. Creditors’ Committee, the Estate Representatives, the U.S. Trustee, or any creditor or other interested party

from asserting such party's substantive rights under the applicable laws of the U.S., Canada or any other relevant jurisdiction including, without limitation, the rights of interested parties or affected persons to appeal from the decisions taken by one or both of the Courts.

9. Subject to the terms hereof, the Debtors, the U.S. Creditors' Committee, the Estate Representatives and their respective employees, members, agents and professionals shall respect and comply with the independent, non-delegable duties imposed upon them by the Bankruptcy Code, the CCAA, the CCAA Order and other applicable laws and orders of the Courts, as applicable.

D. Cooperation

10. To assist in the efficient administration of the Insolvency Proceedings and in recognizing that a Debtor may be a creditor of another Debtor's estate, the Debtors and the Estate Representatives shall where appropriate:

- (a) reasonably cooperate with each other in connection with actions taken in both the U.S. Court and the Canadian Court; and
- (b) take any other reasonable steps to coordinate the administration of the U.S. Proceedings and the Canadian Proceedings for the benefit of the Debtors' respective estates and stakeholders, including, without limitation, developing in consultation with the U.S. Creditors' Committee and seeking approval of any cross-border claims protocol by the Canadian and U.S. Courts.

11. To harmonize and coordinate the administration of the Insolvency Proceedings, the U.S. Court and the Canadian Court each may coordinate activities with and defer to the judgment of the other Court, where appropriate and feasible. In furtherance of the foregoing:

- (a) The U.S. Court and the Canadian Court may communicate with one another, with or without counsel present, with respect to any procedural or substantive matter relating to the Insolvency Proceedings;
- (b) Where the issue of the proper jurisdiction or Court to determine an issue is raised by an interested party in either of the Insolvency Proceedings with respect to a

motion or an application filed in either Court, the Court before which such motion or application was initially filed may contact the other Court to determine an appropriate process by which the issue of jurisdiction will be determined. Such process shall be subject to submissions by the Debtors, the Estate Representatives, the U.S. Creditors' Committee, the Monitor, the U.S. Trustee and any interested party before any determination on the issue of jurisdiction is made by either Court; and

- (c) The Courts may, but are not obligated to, coordinate activities in the Insolvency Proceedings such that the subject matter of any particular action, suit, request, application, contested matter or other proceeding is determined in a single Court.

12. The U.S. Court and the Canadian Court may conduct joint hearings with respect to any matter relating to the conduct, administration, determination or disposition of any aspect of the U.S. Proceedings and the Canadian Proceedings, including the interpretation or implementation of this Protocol if both Courts consider such joint hearings to be necessary or advisable and, in particular, to facilitate or coordinate with the proper and efficient conduct of the U.S. Proceedings and the Canadian Proceedings. With respect to any such joint hearing, unless otherwise ordered, the following procedures will be followed:

- (a) a telephone or video link shall be established so that both the U.S. Court and the Canadian Court shall be able to simultaneously hear the proceedings in the other Court;
- (b) notices, submissions, applications, or motions by any party that are or become the subject of a joint hearing of the Courts (collectively, "Pleadings") shall be made or filed initially only to the Court in which such party is appearing and seeking relief. Promptly after the scheduling of any joint hearing, the party submitting such Pleadings to one Court shall file courtesy copies with the other Court. In any event, Pleadings seeking relief from both Courts shall be filed with both Courts.
- (c) any party intending to rely on any written evidentiary materials in support of a submission to the U.S. Court or the Canadian Court in connection with any joint hearing shall file such materials, which shall be identical insofar as possible and shall be consistent with the procedure and evidentiary rules and requirements of each Court, in advance of the time of such hearing or the submissions of such application;

- (d) If a party has not previously appeared in or attorned or does not wish to attorn to the jurisdiction of either Court, it shall be entitled to file such materials without, by the act of filing, being deemed to have attorned to the jurisdiction of the Court in which such material is filed, so long as it does not request in its materials or submissions any affirmative relief from the Court to which it does not wish to attorn;
- (e) the Judge of the U.S. Court and the Justice of the Canadian Court who will hear any such application or motion shall be entitled to communicate with each other in advance of the hearing on the application or motion, with or without counsel being present, to establish guidelines for the orderly submission of pleadings, papers and other materials and the rendering of decisions by the U.S. Court and the Canadian Court, and to address any related procedural, administrative or preliminary matters; and
- (f) the Judge of the U.S. Court and the Justice of the Canadian Court, having heard any such application, shall be entitled to communicate with each other after the hearing on such application or motion, without counsel present, for the purpose of determining whether consistent rulings can be made by both Courts, and coordinating the terms upon which such rulings shall be made, as well as to address any other procedural or non-substantive matter relating to such applications or motions.

13. Notwithstanding the terms of the preceding paragraph, the Protocol recognizes that the U.S. Court and the Canadian Court are independent courts. Accordingly, although the Courts will seek to cooperate and coordinate with each other in good faith, each of the Courts shall be entitled at all times to exercise its independent jurisdiction and authority with respect to:

- (a) the conduct of the parties appearing in matters presented to such Court; and
- (b) matters presented to such Court, including without limitation, the right to determine if matters are properly before such Court.

14. In the interest of cooperation and coordination of these proceedings, each Court shall recognize and consider all privileges applicable to communications between counsel and parties, including those contemplated by the common interest doctrine or like privileges, which would be applicable in each respective Court. Such privileges in connection with

communications shall be applicable in both Courts with respect to all parties to these proceedings having any requisite common interest.

15. Where one Court has jurisdiction over a matter which requires the application of the law of the jurisdiction of the other Court in order to determine an issue before it, the Court with jurisdiction over such matter may, among other things, hear expert evidence or seek the advice and direction of the other Court in respect of the foreign law to be applied, subject to paragraph 38 herein.

E. Retention and Compensation of Estate Representatives and Professionals

16. The Monitor, its officers, directors, employees, counsel, agents, and any other professionals related therefor, wherever located (collectively, the "Monitor Parties") and any other estate representatives in the Canadian Proceedings and their counsel and other professionals (collectively with the Monitor Parties, the "Canadian Representatives") shall all be subject to the sole and exclusive jurisdiction of the Canadian Court with respect to all matters, including:

- (a) the Canadian Representatives' appointment and tenure in office;
- (b) the retention and compensation of the Canadian Representatives;
- (c) the Canadian Representatives' liability, if any, to any person or entity, including the Canadian Debtors and any third parties, in connection with the Insolvency Proceedings; and
- (d) the hearing and determination of any matters relating to the Canadian Representatives arising in the Canadian Proceedings under the CCAA or other applicable Canadian law.

17. Additionally, the Canadian Representatives, and the Debtors' Canadian counsel:

- (a) shall be compensated for their services solely in accordance with the CCAA and other applicable Canadian law or orders of the Canadian Court; and

(b) shall not be required to seek approval of their compensation in the U.S. Court.

18. The Monitor Parties shall be entitled to the protections of Bankruptcy Code section 306 and the same protections and immunities in the U.S. as those granted to them under the CCAA and the CCAA Order. In particular, except as otherwise provided in any subsequent order entered in the Canadian Proceedings, the Monitor Parties shall incur no liability or obligations as a result of the appointment of the Monitor, the carrying out of its duties or the provisions of the CCAA and the CCAA Order by the Monitor Parties, except any such liability arising from actions of the Monitor Parties constituting gross negligence or willful misconduct.

19. Any estate representative appointed in the U.S. Proceedings, including without limitation, any restructuring officer appointed under Bankruptcy Code section 306, the U.S. Creditors' Committee and any examiner or trustee appointed pursuant to Bankruptcy Code section 1104, and their respective counsel and other professionals (collectively, the "U.S. Representatives"), shall be subject to the sole and exclusive jurisdiction of the U.S. Court with respect to all matters, including:

- (a) the U.S. Representatives' tenure in office;
- (b) the U.S. Representatives' retention and compensation;
- (c) the U.S. Representatives' liability, if any, to any person or entity, including the U.S. Debtors and any third parties, in connection with the Insolvency Proceedings; and
- (d) the hearing and determination of any other matters relating to the U.S. Representatives arising in the U.S. Proceedings under the Bankruptcy Code or other applicable laws of the U.S.

20. Nothing in this Protocol creates any fiduciary duty, duty of care or other duty owed by the U.S. Representatives to the stakeholders in the Canadian Proceedings or by the

Canadian Representatives to the stakeholders in the U.S. Proceedings that they would not otherwise have in the absence of this Protocol.

21. The U.S. Representatives shall not be required to seek approval of their retention in the Canadian Court. Additionally, the U.S. Representatives:

- (a) shall be compensated for their services solely in accordance with the Bankruptcy Code and other applicable laws of the United States or orders of the U.S. Court; and
- (b) shall not be required to seek approval of their compensation in the Canadian Court.

22. Any professionals retained by or with the approval of the Debtors for Canadian related advice, activities performed in Canada or in connection with the Canadian Proceeding, including, in each case, counsel, financial advisors, accountants, consultants and experts (collectively, the "Canadian Professionals") shall be subject to the sole and exclusive jurisdiction of the Canadian Court. Accordingly, the Canadian Professionals: (a) shall be subject to the procedures and standards for retention and compensation applicable in the Canadian Court under the CCAA, the CCAA Order any other applicable Canadian law or orders of the Canadian Court; and (b) shall not be required to seek approval of their retention or compensation in the U.S. Court. The Debtors will include the identity and the amount of payments with respect to the Canadian Professionals in the Debtors' monthly operating reports.

23. Any professionals retained by or with approval of the Debtors for activities performed in the U.S. or in connection with the U.S. Proceedings, including, in each case, counsel, financial advisors, accountants, consultants and experts (collectively, the "U.S. Professionals") shall be subject to the sole and exclusive jurisdiction of the U.S. Court. Accordingly, the U.S. Professionals: (a) shall be subject to the procedures and standards for

retention and compensation applicable in the U.S. Court under the Bankruptcy Code and any other applicable laws of the U.S. or orders of the U.S. Court; and (b) shall not be required to seek approval of their retention of compensation in the Canadian Court.

24. Any professionals retained by the U.S. Creditors' Committee, including, in each case, counsel and financial advisors (collectively, the "Committee Professionals") shall be subject to the sole and exclusive jurisdiction of the U.S. Court. Accordingly, the Committee Professionals: (a) shall be subject to the procedures and standards for retention and compensation applicable in the U.S. Court under the Bankruptcy Code and any other applicable laws of the U.S. or orders of the U.S. Court; and (b) shall not be required to seek approval of their retention of compensation in the Canadian Court.

F. Rights to Appear and Be Heard

25. Each of the Debtors, their creditors and other interested parties in the Insolvency Proceedings, including the Canadian Representatives, and the U.S. Representatives shall have the right and standing to:

- (a) appear and be heard in either the U.S. Court or the Canadian Court in the Insolvency Proceedings to the same extent as a creditor and other interested party domiciled in the forum country, but solely to the extent such party is a creditor or other interested party in the subject forum, subject to any local rules or regulations generally applicable to all parties appearing in the forum; and
- (b) subject to 25(a) above, file notices of appearance or other papers with the Clerk of the U.S. Court or the Canadian Court in the Insolvency Proceedings; *provided, however*, that any appearance or filing may subject a creditor or interested party to the jurisdiction of the Court in which the appearance or filing occurs; provided further, that appearance by the U.S. Creditors' Committee in the Canadian Proceedings shall not form a basis for personal jurisdiction in Canada over the members of the U.S. Committee. Notwithstanding the foregoing, and in accordance with the policies set forth above:
 - (i) the Canadian Court shall have jurisdiction over the U.S. Representatives and the U.S. Trustee solely with respect to the particular matters as to

which the U.S. Representatives or the U.S. Trustee appear before the Canadian Court; and

- (ii) the U.S. Court shall have jurisdiction over the Canadian Representatives solely with respect to the particular matters as to which the Canadian Representatives appear before the U.S. Court.

26. Solely with respect to consensual due diligence the U.S. Creditors' Committee will execute confidentiality agreements in the form to be agreed to by the Canadian Debtors and the U.S. Creditors' Committee.

G. Claims Protocol

27. It may be necessary to implement a specific claims protocol to address, among other things and without limitation, the timing, process, jurisdiction and applicable governing law to be applied to the resolution of claims filed by the Debtors' creditors (including intercompany claims) in the Canadian Proceedings and the U.S. Proceedings. In such event, and in recognition of the inherent complexities of the intercompany claims that may be asserted in the Insolvency Proceedings, the Debtors shall submit a specific claims protocol.

H. Notice

28. Notice of any motion, application or other pleading or paper filed in one or both of the Insolvency Proceedings relating to matters addressed by this Protocol and notice of any related hearings or other proceedings shall be given by appropriate means (including, where circumstances warrant, by courier or electronic forms of communication) to the following:

- (a) all creditors and other interested parties in accordance with the practice of the jurisdiction where the papers are filed or the proceedings are to occur and order of the applicable court ; and
- (b) to the extent not otherwise entitled to receive notice under subpart (a) of this paragraph, to:

- (i) U.S. Counsel to the Debtors, Akin Gump Stauss Hauer & Feld LLP, Bank of America Tower, 1 Bryant Park, New York, NY 10036, USA (Attn: Meredith Lahaie and Kevin Zuzolo) and Armstrong Teasdale LLP, 7700 Forsyth Blvd., Suite 1800, St. Louis, MO 63105, USA (Attn: Erin Edelman and John Willard);
- (ii) Canadian Counsel to the Debtors, Cassels Brock & Blackwell LLP, 2100, 40 King Street West, Toronto, ON Canada, M5H 3C2 (Attn: Ryan Jacobs, Jane Dietrich, Natalie Levine);
- (iii) the Monitor, FTI Consulting Canada Inc., TD Waterhouse Tower, 79 Wellington Street West, Suite 2010, P.O. Box 104, Toronto, ON Canada, M5K 1G8 (Attn: Greg Watson, Paul Bishop), and its counsel, Bennett Jones LLP, 3400, One First Canadian Place, Toronto, ON Canada, M5X 1A4 (Attn: Sean Zweig, Kevin J. Zych);
- (iv) Counsel to the ABL Agent, Choate Hall & Stewart LLP, Two International Place, Boston, MA 02110 (Attn: Kevin Simard, Doug Gooding and Jonathan Marshall); Thompson Coburn LLP, One US Bank Plaza, St. Louis, MO 63101 (Attn: Mark Bossi); and Norton Rose Fulbright Canada LLP, Suite 3800, Royal Bank Plaza, South Tower, 200 Bay Street, P.O. Box 84, Toronto, ON Canada, M5J 2Z4 (Attn: Tony Reyes and David Amato);
- (v) Counsel to the Ad Hoc Term Lender Committee, Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, NY 10036, USA (Attn: Stephen D. Zide); Doster, Ullom & Boyle, LLC, 16090 Swingley Ridge Road, Suite 620, Chesterfield, Missouri 63017, USA (Attn: Gregory D. Willard); and Fasken Martineau DuMoulin LLP, Bay Adelaide Centre, 333 Bay Street, Suite 2400, P.O. Box 20, Toronto, ON Canada, M5H 2T6 (Attn: Stuart Brotman)
- (vi) Counsel to any statutory committee or any other official appointed in the U.S. Proceedings;
- (vii) the Office of the United States Trustee for Eastern District of Missouri;
- (viii) such other parties as may be designated by either Court from time to time.

29. Notice in accordance with this paragraph may be designated by either of the Courts from time to time. Notice in accordance with this paragraph shall be given by the party otherwise responsible for effecting notice in the jurisdiction where the underlying papers are

filed or the proceedings are to occur. In addition to the foregoing, upon request, the U.S. Debtors or the Canadian Debtors shall provide the U.S. Court or the Canadian Court, as the case may be, with copies of any orders, decisions, opinions or similar papers issued by the other Court in the Insolvency Proceedings.

30. When any cross-border issues or matters addressed by this Protocol are to be addressed before a Court, notices shall be provided in the manner and to the parties referred to in paragraph 28 above.

I. Recognition of Stays of Proceedings

31. The Canadian Court hereby recognizes the validity of the stay of proceedings and actions against or respecting the U.S. Debtors and their property under Bankruptcy Code section 362 (the "U.S. Stay"). In implementing the terms of this paragraph, the Canadian Court may consult with the U.S. Court regarding the interpretation, extent, scope and applicability of the U.S. Stay, and any orders of this U.S. Court modifying or granting relief from the U.S. Stay.

32. The U.S. Court hereby recognizes the validity of the stay of proceedings and actions against or respecting the Canadian Debtors, its property and the current and former directors and officers of the Canadian Debtors under the CCAA and the CCAA Order (the "Canadian Stay"). In implementing the terms of this paragraph, the U.S. Court may consult with the Canadian Court regarding the interpretation, extent, scope and applicability of the Canadian Stay, and any orders of the Canadian Court modifying or granting relief from the Canadian Stay.

33. Nothing contained herein shall affect or limit the Debtors or other parties' rights to assert the applicability or non-applicability of the U.S. Stay or the Canadian Stay to any particular proceeding, property, asset, activity or other matter, wherever pending or located. Subject to the terms hereof: (a) any motion with respect to the application of the stay of

proceedings issued by the Canadian Court in the CCAA Proceeding shall be heard and determined by the Canadian Court and (b) any motion with respect to the application of the stay under Bankruptcy Code section 362 shall be heard and determined by the U.S. Court.

J. Effectiveness; Modification

34. This Protocol shall become effective only upon its approval by both the U.S. Court and the Canadian Court.

35. This Protocol may not be supplemented, modified, terminated or replaced in any manner except by the U.S. Court and the Canadian Court after notice and a hearing. Notice of any legal proceeding to supplement, modify, terminate or replace this Protocol shall be given in accordance with the notice provision contained in this Protocol.

K. Procedure for Resolving Disputes Under the Protocol

36. Disputes relating to the terms, intent or application of this Protocol may be addressed by interested parties to either the U.S. Court, the Canadian Court or both Courts upon notice as set forth in paragraphs 28 and 29 above. In rendering a determination in any such dispute, the Court to which the issue is addressed:

- (a) shall consult with the other Court; and
- (b) may, in its sole discretion, either:
 - (i) render a binding decision after such consultation;
 - (ii) defer to the determination of the other Court by transferring the matter, in whole or in part, to the other Court; or
 - (iii) seek a joint hearing of both Courts.

37. Notwithstanding the foregoing, each Court in making a determination shall have regard to the independence, comity or inherent jurisdiction of the other Court established under existing law.

38. In implementing the terms of the Protocol, the U.S. Court and the Canadian Court may, in their sole, respective discretion, provide advice or guidance to each other with respect to legal issues in accordance with the following procedures:

- (a) The U.S. Court or the Canadian Court, as applicable, may determine that such advice or guidance is appropriate under the circumstances;
- (b) The Court issuing such advice or guidance shall provide it to the non-issuing Court in writing;
- (c) Copies of such written advice or guidance shall be served by the applicable Court in accordance with paragraph 28 hereof; and
- (d) The Courts may jointly decide to invite the Debtors, the Estate Representatives, the U.S. Trustee, the Monitor and any other affected or interested party to make submissions to the appropriate Court in response to or in connection with any written advice or guidance received from the other Court.

39. For clarity, the provisions of paragraph 38 shall not be construed to restrict the ability of the U.S. Court or the Canadian Court to confer, as provided above, whenever they deem it appropriate to do so.

L. Preservation of Rights

40. Except as specifically provided herein, neither the terms of this Protocol nor any actions taken under the terms of this Protocol shall (a) prejudice or affect the powers, rights, claims and defenses of the Debtors and their estates, the Estate Representatives, the U.S. Trustee, the Monitor or any of the Debtors' creditors under applicable law, including the Bankruptcy Code, the CCAA and the Orders of the Courts or (b) preclude or prejudice the rights of any

person to assert or pursue such person's substantive rights against any other person under the applicable laws of the United States or Canada.

41. The question of the degree of standing of the U.S. Creditors' Committee in the Canadian Court remains an open issue. This Protocol is without prejudice to the question one way or the other.

Schedule A

GUIDELINES FOR COMMUNICATION AND COOPERATION BETWEEN COURTS IN CROSS-BORDER INSOLVENCY MATTERS

INTRODUCTION

- A. The overarching objective of these Guidelines is to improve in the interests of all stakeholders the efficiency and effectiveness of cross-border proceedings relating to insolvency or adjustment of debt opened in more than one jurisdiction (“Parallel Proceedings”) by enhancing coordination and cooperation amongst courts under whose supervision such proceedings are being conducted. These Guidelines represent best practice for dealing with Parallel Proceedings.
- B. In all Parallel Proceedings, these Guidelines should be considered at the earliest practicable opportunity.
- C. In particular, these Guidelines aim to promote:
- (i) the efficient and timely coordination and administration of Parallel Proceedings;
 - (ii) the administration of Parallel Proceedings with a view to ensuring relevant stakeholders’ interests are respected;
 - (iii) the identification, preservation, and maximisation of the value of the debtor’s assets, including the debtor’s business;
 - (iv) the management of the debtor’s estate in ways that are proportionate to the amount of money involved, the nature of the case, the complexity of the issues, the number of creditors, and the number of jurisdictions involved in Parallel Proceedings;
 - (v) the sharing of information in order to reduce costs; and
 - (vi) the avoidance or minimisation of litigation, costs, and inconvenience to the parties² in Parallel Proceedings.
- D. These Guidelines should be implemented in each jurisdiction in such manner as the jurisdiction deems fit.³
- E. These Guidelines are not intended to be exhaustive and in each case consideration ought to be given to the special requirements in that case.
- F. Courts should consider in all cases involving Parallel Proceedings whether and how to implement these Guidelines. Courts should encourage and where necessary direct, if they have the power to do so, the parties to make the necessary applications to the court to facilitate such implementation by a protocol or order derived from these Guidelines, and encourage them to act so as to promote the objectives and aims of these Guidelines wherever possible.

² The term “parties” when used in these Guidelines shall be interpreted broadly.

³ Possible modalities for the implementation of these Guidelines include practice directions and commercial guides.

ADOPTION & INTERPRETATION

Guideline 1: In furtherance of paragraph F above, the courts should encourage administrators in Parallel Proceedings to cooperate in all aspects of the case, including the necessity of notifying the courts at the earliest practicable opportunity of issues present and potential that may (a) affect those proceedings; and (b) benefit from communication and coordination between the courts. For the purpose of these Guidelines, “administrator” includes a liquidator, trustee, judicial manager, administrator in administration proceedings, debtor-in-possession in a reorganisation or scheme of arrangement, or any fiduciary of the estate or person appointed by the court.

Guideline 2: Where a court intends to apply these Guidelines (whether in whole or in part and with or without modification) in particular Parallel Proceedings, it will need to do so by a protocol or an order,⁴ following an application by the parties or pursuant to a direction of the court if the court has the power to do so.

Guideline 3: Such protocol or order should promote the efficient and timely administration of Parallel Proceedings. It should address the coordination of requests for court approvals of related decisions and actions when required and communication with creditors and other parties. To the extent possible, it should also provide for timesaving procedures to avoid unnecessary and costly court hearings and other proceedings.

Guideline 4: These Guidelines when implemented are not intended to:

- (i) interfere with or derogate from the jurisdiction or the exercise of jurisdiction by a court in any proceedings including its authority or supervision over an administrator in those proceedings;
- (ii) interfere with or derogate from the rules or ethical principles by which an administrator is bound according to any applicable law and professional rules;
- (iii) prevent a court from refusing to take an action that would be manifestly contrary to the public policy of the jurisdiction; or
- (iv) confer or change jurisdiction, alter substantive rights, interfere with any function or duty arising out of any applicable law, or encroach upon any applicable law.

Guideline 5: For the avoidance of doubt, a protocol or order under these Guidelines is procedural in nature. It should not constitute a limitation on or waiver by the court of any powers, responsibilities, or authority or a substantive determination of any matter in controversy before the court or before the other court or a waiver by any of the parties of any of their substantive rights and claims.

Guideline 6: In the interpretation of these Guidelines or any protocol or order under these Guidelines, due regard shall be given to their international origin and to the need to promote good faith and uniformity in their application.

COMMUNICATION BETWEEN COURTS

⁴ In the normal case, the parties will agree on a protocol derived from these Guidelines and obtain the approval of each court in which the protocol is to apply.

Guideline 7: A court may receive communications from a foreign court and may respond directly to them. Such communications may occur for the purpose of the orderly making of submissions and rendering of decisions by the courts, and to coordinate and resolve any procedural, administrative or preliminary matters relating to any joint hearing where Annex A is applicable. Such communications may take place through the following methods or such other method as may be agreed by the two courts in a specific case:

- (i) Sending or transmitting copies of formal orders, judgments, opinions, reasons for decision, endorsements, transcripts of proceedings or other documents directly to the other court and providing advance notice to counsel for affected parties in such manner as the court considers appropriate.
- (ii) Directing counsel or other appropriate person to transmit or deliver copies of documents, pleadings, affidavits, briefs or other documents that are filed or to be filed with the court to the other court in such fashion as may be appropriate and providing advance notice to counsel for affected parties in such manner as the court considers appropriate.
- (iii) Participating in two-way communications with the other court, by telephone or video conference call or other electronic means, in which case Guideline 8 should be considered.

Guideline 8: In the event of communications between courts, other than on administrative matters, unless otherwise directed by any court involved in the communications whether on an *ex parte* basis or otherwise, or permitted by a protocol, the following shall apply:

- (i) In the normal case, parties may be present.
- (ii) If the parties are entitled to be present, advance notice of the communications shall be given to all parties in accordance with the rules of procedure applicable in each of the courts to be involved in the communications.
- (iii) The communications between the courts shall be recorded and may be transcribed. A written transcript may be prepared from a recording of the communications that, with the approval of each court involved in the communications, may be treated as the official transcript of the communications.
- (iv) Copies of any recording of the communications, of any transcript of the communications prepared pursuant to any direction of any court involved in the communications, and of any official transcript prepared from a recording may be filed as part of the record in the proceedings and made available to the parties and subject to such directions as to confidentiality as any court may consider appropriate.
- (v) The time and place for communications between the courts shall be as directed by the courts. Personnel other than judges in each court may communicate with each other to establish appropriate arrangements for the communications without the presence of the parties.

Guideline 9: A court may direct that notice of its proceedings be given to parties in proceedings in another jurisdiction. All notices, applications, motions, and other materials served for purposes of the proceedings before the court may be ordered to be provided to such other parties by

making such materials available electronically in a publicly accessible system or by facsimile transmission, certified or registered mail or delivery by courier, or in such other manner as may be directed by the court in accordance with the procedures applicable _in the court.

APPEARANCE IN COURT

Guideline 10: A court may authorise a party, or an appropriate person, to appear before and be heard by a foreign court, subject to approval of the foreign court to such appearance.

Guideline 11: If permitted by its law and otherwise appropriate, a court may authorise a party to a foreign proceeding, or an appropriate person, to appear and be heard by it without thereby becoming subject to its jurisdiction.

CONSEQUENTIAL PROVISIONS

Guideline 12: A court shall, except on proper objection on valid grounds and then only to the extent of such objection, recognise and accept as authentic the provisions of statutes, statutory or administrative regulations, and rules of court of general application applicable to the proceedings in other jurisdictions without further proof. For the avoidance of doubt, such recognition and acceptance does not constitute recognition or acceptance of their legal effect or implications.

Guideline 13: A court shall, except upon proper objection on valid grounds and then only to the extent of such objection, accept that orders made in the proceedings in other jurisdictions were duly and properly made or entered on their respective dates and accept that such orders require no further proof for purposes of the proceedings before it, subject to its law and all such proper reservations as in the opinion of the court are appropriate regarding proceedings by way of appeal or review that are actually pending in respect of any such orders. Notice of any amendments, modifications, extensions, or appellate decisions with respect to such orders shall be made to the other court(s) involved in Parallel Proceedings, as soon as it is practicable to do so.

Guideline 14: A protocol, order or directions made by a court under these Guidelines is subject to such amendments, modifications, and extensions as may be considered appropriate by the court, and to reflect the changes and developments from time to time in any Parallel Proceedings. Notice of such amendments, modifications, or extensions shall be made to the other court(s) involved in Parallel Proceedings, as soon as it is practicable to do so.

ANNEX A (JOINT HEARINGS)

Annex A to these Guidelines relates to guidelines on the conduct of joint hearings. Annex A shall be applicable to, and shall form a part of these Guidelines, with respect to courts that may signify their assent to Annex A from time to time. Parties are encouraged to address the matters set out in Annex A in a protocol or order.

ANNEX A: JOINT HEARINGS

A court may conduct a joint hearing with another court. In connection with any such joint hearing, the following shall apply, or where relevant, be considered for inclusion in a protocol or order:

- (i) The implementation of this Annex shall not divest nor diminish any court's respective independent jurisdiction over the subject matter of proceedings. By implementing this Annex, neither a court nor any party shall be deemed to have approved or engaged in any infringement on the sovereignty of the other jurisdiction.
- (ii) Each court shall have sole and exclusive jurisdiction and power over the conduct of its own proceedings and the hearing and determination of matters arising in its proceedings.
- (iii) Each court should be able simultaneously to hear the proceedings in the other court. Consideration should be given as to how to provide the best audio-visual access possible.
- (iv) Consideration should be given to coordination of the process and format for submissions and evidence filed or to be filed in each court.
- (v) A court may make an order permitting foreign counsel or any party in another jurisdiction to appear and be heard by it. If such an order is made, consideration needs to be given as to whether foreign counsel or any party would be submitting to the jurisdiction of the relevant court and/or its professional regulations.
- (vi) A court should be entitled to communicate with the other court in advance of a joint hearing, with or without counsel being present, to establish the procedures for the orderly making of submissions and rendering of decisions by the courts, and to coordinate and resolve any procedural, administrative or preliminary matters relating to the joint hearing.
- (vii) A court, subsequent to the joint hearing, should be entitled to communicate with the other court, with or without counsel present, for the purpose of determining outstanding issues. Consideration should be given as to whether the issues include procedural and/or substantive matters. Consideration should also be given as to whether some or all of such communications should be recorded and preserved.

CV-19-00614629-00CL

Court File No.

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PAYLESS SHOESOURCE CANADA INC. AND PAYLESS SHOESOURCE CANADA GP INC.

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT TORONTO

INITIAL ORDER

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AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PAYLESS SHOESOURCE CANADA INC. AND PAYLESS SHOESOURCE CANADA GP INC.

ONTARIO

**SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT TORONTO

**MOTION RECORD OF THE APPLICANTS
(Re: Liquidation Consulting Agreement Approval Order)
(Returnable February 21, 2019)**

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